

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Beverly J. Carlson	:	
	:	
-vs-	:	10-0051
	:	
Commonwealth Edison Company	:	
	:	
Complaint as to service in Harvard, Illinois.	:	
	:	

RESPONDENT'S INITIAL BRIEF

Background

On January 21, 2010, the Complainant, Beverly J. Carlson ("Complainant" or "Carlson") filed a Formal Complaint ("Complaint") against the Respondent, Commonwealth Edison Company ("Respondent" or "ComEd") requesting ComEd to move the electric transformer that is allegedly too close to her home at 1806 Reese Road, Harvard, Illinois ("Property"), have ComEd trim the trees on her Property, and replace the alleged rotting electric poles on her Property.

The Complaint was assigned to an Administrative Law Judge who set status hearings that were held on February 25, March 16, May 4 and June 17, 2010. On April 5, 2010, ComEd filed a Motion to Dismiss to which the Complainant replied. The ALJ denied the Motion to Dismiss. On August 11, 2010, an evidentiary hearing was held. Both Complainant and Respondent were represented by counsel. Complainant testified on her own behalf and her former husband, Arthur Carlson, also testified on her behalf. Respondent presented four employees as witnesses: Walter Thompson, a construction supervisor; William M. Mueller, a principal rate administrator in the Retail Rate Department; Katherine Runyan, a senior vegetation project manager; and Ned Flack, the

New Business Manager in the Rockford region. At the conclusion of the evidentiary hearing, the record was marked "Heard and Taken."

At the evidentiary hearing, the ALJ requested that ComEd file its rules and regulations regarding the connection and provision of service to customers, Information and Requirments for the Supply of Electric Service. ComEd did so on August 17, 2010 as its Late filed Exhibit "A." Also, at the evidentiary hearing, the ALJ requested that the parties file Initial Briefs on October 15, 2010 and Reply Briefs on November 15, 2010.

Testimony on Behalf of Complainant

Mr. Carlson testified that in 1967 he and the Complainant purchased the Property from Raymond Rust and his wife. He testified that Mr. Rust advised him that ComEd owned the wires and poles up to the meter and the remainder of the electric service was the responsibility of the Rusts. He testified that in 1973, Respondent secured a pole from falling down by installing a guy wire. He testified that in the 1960s he had a conversation with a ComEd employee, Ken Luckow, who told him that ComEd buried the pole tag IDs at the base of the pole. ComEd had a continuing hearsay objection to Mr. Carlson's testimony regarding his alleged conversations with Mr. Rust and Mr. Luckow. Mr. Carlson testified that ComEd also performed landscaping and tree trimming on the Property.

Mr. Carlson testified that there are two poles on the Property, one near the western fence and the other 30 feet from the house. He testified that the trees on the Property are large and "have a tendency to fall down out of old age." (Tr. 164) He testified that the transformer and meter box are on the pole closer to the house.

Ms. Carlson testified that she has been the sole owner of the Property since 1993. She introduced three photographs, Complainant Exhibits, B, 1 and 2, showing numbers on the crossarm and transformer on the pole 35 feet from her home. She introduced Complainant Exhibit 3 which is a photograph of the poles on the west side of the Property.

Ms. Carlson testified that in her opinion the poles on the Property are rotting. (Tr. 134) Complainant's Exhibit 5 are photographs of the poles in question. Complainant testified that in the summer of 1993, ComEd came out and did tree trimming due to the wires touching a tree and ComEd sent a landscaper out subsequently to repair the damaged landscaping caused at the time of the tree trimming.

Ms. Carlson testified that on September 20, 2008, a person named Brian came out to the Property to assess what work needed to be done regarding tree trimming. Complainant Exhibit 7 is a photograph of a dead tree on the Property. Complainant testified that this tree could fall on ComEd's wires. Complainant testified that on December 12, 2009, a branch of that tree fell on the neutral wire causing a fire. ComEd came out that day and "fixed the problem." (Tr. 154) Complainant testified that on May 2, 2010, electricity was knocked out to her property when a branch fell on the lines and ComEd came out that night and repaired the line and cut the branch by the line that was repaired.

Complainant concluded by presenting various photographs of the trees and electric lines on the Property, Complainant Exhibits 6, 8 and 9. With respect to Complainant Exhibit 8, she noted that the poles along Reese Road "are nice poles compared to mine." (Tr. 168)

Mr. Thompson was presented as an adverse witness by the Complainant. He testified that he has been a ComEd construction supervisor for 19 1/2 years. He testified that he was at the Property on two occasions. The first time, early September 2009, he was unable to gain entry to the Property because the gate was locked. The second visit was on September 23, 2009. On this occasion he met the Complainant at the Property. He noted that the second pole, closer the house, with the transformer and meter base on it was leaning slightly. He did not see any cracking of this pole. He looked at the other pole closer to the road and did not see that it was cracked. (Tr. 95)

Mr. Thompson testified that he noticed stenciling on the transformer and did not notice any ComEd identification on the poles. To his knowledge there was no numbers for the poles. (Tr. 104-105) He testified that ComEd does not allow a meter base on its poles. (Tr. 106) He also testified that ComEd installs and repairs about 150 feet of secondary connection and after that, it is customer-owned.

Testimony on Behalf of Respondent

Mr. Mueller, as a principal rate administrator for ComEd introduced various ComEd tariffs relevant to the Complaint. He introduced ComEd Exhibits 1 and 2, General Terms and Conditions Tariffs 159 and 160, respectively. He testified that pursuant to Tariff 159, ComEd furnishes, installs and owns the wire span from ComEd's overhead primary system to the first point of connection on the customer's property, a distance of 150 feet.

He testified that with respect to ComEd Exhibits 3 and 4, Tariff Sheet Nos. 165 and 166, ComEd provides a company-owned transformer and the customer provides the location for the transformer and related equipment. (Tr. 177). ComEd Exhibit 5 is Tariff

Sheet No. 156. He testified that this tariff provides that any relocation of facilities provided by ComEd requested to be moved by the customer would be considered nonstandard service to be paid for by the customer. (Tr. 177-178). He testified that pursuant to Tariff Sheet No. 192, ComEd Exhibit 6, Respondent does not allow meter-related facilities to be installed on its poles or equipment.

Mr. Mueller summarized and concluded his testimony, as follows: "As a residential customer, Miss Carlson owns and is responsible to maintain the overhead primary service wire beyond and including the first point of connection or pole on her property. All poles on Miss Carlson's property are owned by Miss Carlson. The pole on which the ComEd transformer is mounted is also owned by Miss Carlson. ComEd only owns the first span of wires between ComEd distribution system and the first point of connection on Miss Carlson's property. This is consistent with longstanding ComEd's service policy as stated in ComEd's General Terms and Conditions, which is one of the tariffs on file with the Commission." (Tr. 179)

Mr. Thompson was also called as a ComEd witness. He testified that the two poles on the Property are owned by the Complainant because there was no ComEd brand on the poles and one pole has a meter base on it, which is not permitted on ComEd facilities. Mr. Thompson sponsored ComEd Exhibits 7A, B and C, as well as ComEd Exhibits 8, 9 and 10. ComEd Exhibit 7A is a ComEd map zoomed in of the poles on the Property and along Reese Road. ComEd Exhibit 7B is a regular map of the poles. ComEd Exhibit 7C is an aerial photograph with ComEd information on it. ComEd Exhibit 8 is a screen print showing the transformer number corresponding to the pole on the Property. ComEd Exhibit 9 is a map legend showing the meaning of various symbols

on the maps. ComEd Exhibit 10 is the pole record sheet of the poles owned by ComEd along Reese Road. Mr. Thompson identified the pole with the transformer at the Property on the pole map. (Tr. 196) He further identified the symbol of a "C" associated with this pole on the map. Pursuant to the map legend, Mr. Thompson confirmed the "C" identifies the pole as customer-owned. The aerial photograph also shows the poles owned by ComEd along Reese Road which shows ComEd's pole numbers. Mr. Thompson testified that the transformer was installed in 1975 and there is no ComEd record of Respondent maintaining the transformer. In summary, Mr. Thompson found no ComEd record which showed that the poles on the Property are owned by the Respondent. (Tr. 208)

Ms. Runyan testified as to whether there was any regular tree trimming on the Property. She testified that in two emergency situations ComEd removed tree limbs from an electric line. Those occurred on December 12, 2009 and May 2, 2010, as set forth on ComEd Exhibits 10A and 10B. She testified that the tree limbs were removed for safety reasons. Ms. Runyan also sponsored the two trouble tickets, ComEd Exhibits 11A and 11B from December 12, 2009 and May 2, 2010. She concluded by stating that tree trimming has never been scheduled for the Property.

Ms. Runyan reviewed Complainant Exhibits E-1 and E-2, ComEd screen prints dated November 6, 2008 and December 3, respectively. She testified that ComEd determined that the poles on the Property were customer-owned so that no regularly scheduled tree trimming would be done. ComEd only removed the hazardous tree limbs during emergencies.

Mr. Flack testified that he visited the Property in December 2009 along with ComEd employee, Ken Richardson, but never met with the Complainant. He testified that if a customer wants to relocate facilities on the Property, the customer pays for it. Finally, Mr. Flack described why a C on the pole records is written in to show customer-owned, for example as shown on ComEd Exhibit 7B. (Tr. 245-246)

Analysis and Conclusions

As with this type of complaint case at the Commission, the Complainant has the burden of proof by a preponderance of the evidence. In terms of this complaint, Carlson, simply stated, has the burden of showing that the two poles on the Property are owned by ComEd. Complainant has failed to provide any evidence that these poles are owned by ComEd.

The only testimony provided by the Complainant consisted of the recollections of alleged conversations that Arthur Carlson had with the former owners, the Rusts, regarding the ownership of the poles and with an alleged ComEd employee regarding buried pole tag IDs. These alleged conversations are hearsay and are not entitled to any weight and should have been stricken. Moreover, if, in fact the pole tag IDs were buried at the base of one of the poles, Complainant should have dug them up and presented them as evidence of ownership. Complainant did not present the pole tag IDs, and only presented a number off the transformer, which ComEd acknowledged that it owned. This does not prove that ComEd owned the pole, only that it owned the transformer on the pole.

Carlson provided a series of photographs of the poles in question on the Property. None of these photographs proved that ComEd owned the poles. To the contrary, the

photographs on Complainant Exhibit 8 clearly showed the well maintained poles owned by ComEd along Reese Road compared to the poorly maintained Complainant poles on the Property. The photographs only demonstrated that the Complainant has failed to properly maintain the poles on her Property.

Carlson also failed to prove that ComEd did regularly scheduled tree trimming and maintenance of the Property poles. Whether it was the summer of 1993, September 2008, December 2009, or May 2010, each time that ComEd came out to the Property was in an emergency situation to restore electric service to the Property. Thus, even when it came to tree trimming, the Complainant failed to prove that ComEd did regularly scheduled tree trimming.

Carlson even failed in the tactic of calling Mr. Thompson as an adverse witness. Mr. Thompson's visit on September 23, 2009 showed that the poles on the Property were not cracked or rotting as alleged by the Complainant. On this visit, Mr. Thompson did not see any ComEd branding on the poles, which would be an indication of Respondent ownership of the poles.

In summary, the Complainant failed to provide any written evidence showing that ComEd owned the poles in question, and failed to show that ComEd did any maintenance or tree trimming in a regularly scheduled manner.

On the other hand, ComEd presented the testimony of four witnesses and written evidence showing that ComEd does not own the poles on the Property, the customer is responsible for their maintenance, and if she wants them relocated or replaced, she would be responsible for those costs.

Mr. Mueller introduced various ComEd General Terms and Conditions tariff sheets which showed that ComEd only provides overhead primary lines to the first point of connection on the Property and, thereafter, the poles and lines are owned by Carlson, except for the transformer. ComEd's tariffs also provided that if Carlson wishes to relocate her facilities, she must pay for it. Finally, he testified that, pursuant to the tariff, ComEd does not allow meter-related facilities to be installed on its poles or equipment. The fact that Carlson has a meter base on the pole closer to her home is proof that she owns the pole nearer her home.

Mr. Thompson inspected the poles on the Property and was unable to see any ComEd branding on the poles. He, too, noted that the meter base on one of the poles is not permitted by ComEd. His examination of ComEd's books and records, including ComEd's pole record sheet, ComEd Exhibit 10, failed to show that ComEd owned the poles on the Property.

Ms. Runyan also examined ComEd's books and records to determine if ComEd did regularly scheduled tree trimming on Property. Her examination showed that, as Carlson testified, the only time tree trimming was done was under emergency situations. There was no evidence presented that ComEd did regular tree trimming.

Mr. Flack confirmed that a C within a circle on the ComEd map, ComEd Exhibit 7B, showed that that poles on the Property were customer owned.

In summary, Carlson has not sustained her burden of proof. She has failed to provide any evidence that ComEd owns the poles on the Property. The evidence presented by ComEd clearly shows that the customer, Carlson, owns the poles and is responsible for their maintenance as well as trimming her own trees. If the Complainant

wishes to relocate the poles on the Property, she is required to pay for it pursuant to ComEd tariffs approved by the Commission.

Based upon all of the foregoing, Commonwealth Edison Company respectfully requests that the Complaint filed by Beverly J. Carlson against Commonwealth Edison Company on January 21, 2010 be denied.

Respectfully submitted,
Commonwealth Edison Company

By: /s/Mark L. Goldstein
Its Attorney

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CERTIFICATE OF SERVICE

I hereby certify that on October 15, 2010, I served the foregoing Respondent's

Initial Brief on each of the parties indicated below in the manner so indicated:

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